

HAZARDOUS WASTE PROGRAM DESCRIPTION

(Revised September, 1994)

I. Introduction

Pursuant to RSA 21-0:8 and RSA 147-A, the State of New Hampshire ("NH" or "the State") has conferred the authority for administering the hazardous waste management program on the New Hampshire Department of Environmental Services, Waste Management Division (DES). The Hazardous Waste Rules, Env-Wm 110, 211-216, 351-353 and 400 through 1000, set forth regulations that are modeled after the U.S. Environmental Protection Agency's (EPA) RCRA regulations. These rules cover a variety of areas including hazardous waste generator, transporter, and facility owner/operator requirements. DES, in cooperation with EPA, has developed a variety of policies, systems, and procedures to operate the hazardous waste program. These are described in this program description, as required for RCRA Final Authorization under Title 40, Code of Federal Regulations (CFR), Part 271.6.

This program description has been significantly revised since the last submittal in 1991 and this revision will replace any prior program descriptions submitted to EPA. In addition to the routine changes which will occur, such as areas devoted to staffing and budget, the reader should be aware of the major changes noted below:

- 1) The State has submitted a request for corrective action as part of its recent authorization package. To this end, the program description has been revised to include the procedures for corrective action at section IV.L.
- 2) The State has also requested authority to regulate mixed wastes under the current RCRA program. The procedures for regulating mixed wastes are described in section IV.M.
- 3) The procedures for permitting transfer facilities are described in section IV.G.
- 4) DES' "permit-by-rule" is now referred to as a "limited permit" and is described in section IV.E.

II. Scope, Structure, Coverage, and Processes of the State of New Hampshire's Hazardous Waste Management Program - 40 CFR 271.6(a)

A. Requirements for Identification and Listing-271.9

1. Definition of Hazardous Waste

Under Chapter Env-Wm 400 of the Hazardous Waste Rules, New Hampshire regulates a universe of hazardous wastes consistent with the federal regulations. There are also NH requirements which are more stringent or broader in scope.

The definition of "hazardous waste" in NH's rules at Env-Wm 110.01(b)(53) is broader in scope than the federal regulations in that it allows DES to identify as hazardous wastes those wastes that are "irritants" or "strong sensitizers".

Household hazardous wastes are not exempt from state hazardous waste rules when collected at household hazardous waste collection projects, sites, or facilities. Also, NH's exemption of household hazardous waste is narrower in scope in that the State definition is limited to wastes generated by non-commercial, residential use and does not exempt waste produced by hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

2. Hazardous Waste Lists and Characteristics

The State has adopted the four lists of hazardous wastes that are set forth in 40 CFR Part 261 (7-1-89 edition) and has adopted all the characteristics for identifying hazardous waste that are set forth in said part.

NH is broader in scope than EPA with regard to hazardous waste characteristics in that its hazardous waste rules include the characteristic of "air reactive" at Env-Wm 403.05. The testing procedures required for characteristics are consistent with EPA's except that NH also requires a test for solid corrosives.

NH is broader in scope than EPA with regard to listed hazardous wastes in that its hazardous waste rules list hazardous waste mixtures, strontium sulfide, some additional generic industrial process wastes, and used oil.

a. Hazardous Waste Mixtures - Under the provisions of Env-Wm 404.01(b), NH classifies the following as hazardous wastes:

i. those wastes containing acutely hazardous constituents listed in Env-Wm 402.04, and/or toxic constituents that are known carcinogens, such that the total combined concentration of any one or all such acutes and carcinogens in the mixture is greater than five (5) parts per million;

ii. those wastes containing toxic constituents listed in Env-Wm 402.05, such that the total combined concentration of any or all of the listed constituents is greater than 100 parts per million.

b. Strontium Sulfide - Strontium sulfide is listed in Env-Wm 402.04(c) as an acutely hazardous waste and is assigned the NH Hazardous Waste Number "NH03".

c. Additional Generic Industrial Process Wastes - In addition to federally listed wastes, NH lists the following generic industrial process wastes:

i. paint residues, sludges, wastewater treatment sludges and filter media from industrial painting utilizing oil/solvent based paints;

ii. spent cyanide bath solutions and cyanidation wastewater treatment tailing pond sediment from mineral metals recovery operations;

iii. paint residues, sludges, and wastewater treatment sludges from industrial painting in the mechanical and electrical products industry; and

iv. used oil, as discussed below.

d. Used Oil - NH lists used oil as a generic industrial process waste at Env-Wm 402.06(b). When recycled, used oil is subject to the requirements for generators, transporters, burners, and marketers at Part Env-Wm 807. Some of these requirements are more stringent than the federal regulations for used oil being recycled.

Unlike EPA, NH requires documentation of claims that materials are not wastes or are conditionally exempt from regulation regardless of whether an enforcement action is initiated.

B. Requirements for Generators-271.10

The generator requirements set forth in Chapter 500 of NH's Hazardous Waste Rules are consistent with and equivalent to EPA's regulations, except that some requirements are more stringent or broader-in-scope. The significant differences are described in this section.

Under Env-Wm 500, new generators are required to notify DES and obtain an EPA identification number before they perform any activity subject to the hazardous waste rules. Generators are required to submit an annual report to DES. This is more stringent than the federal requirement for a biennial report. Generators are also subject to a quarterly activity report and fee requirements if they generate 300 kgs or more of unrecycled hazardous waste in a 3 month period.

Although NH and EPA use the same manifest form, NH requires additional information, as set forth in Env-Wm 510.03, to be contained on the manifest. NH also requires the use of an 8 part manifest. Generators must notify DES of any waste shipment that has been returned by sending a letter, or by dating, initialing, and writing "rej'd shipment rec'd" next to each returned item on the manifest. Additionally, record keeping requirements are also more stringent than EPA in that NH requires generators to keep records for 7 years, versus 3 years for EPA.

Unlike EPA, NH regulates any person who generates 100 kgs or more of hazardous waste per month (or 1 kg or more of acutely hazardous waste per month) as a full quantity generator.

Small quantity generators (SQGs), who generate less than 100 kgs per month, must meet certain storage requirements. These include spill and fire control equipment, "No Smoking" signs near ignitable wastes, and a minimum aisle space of 2 feet. An extended storage option allows NH SQGs to accumulate up to 1 full year provided additional management procedures (40 CFR subparts I and J and Env-Wm 508.03) are followed, and the quantity never exceeds 1000 kgs. Additionally, the State has not adopted an exemption for waste mixtures generated by SQGs, which exceed volume and quantity limits, and does not exempt mixtures of SQG wastes with used oil.

There are also a number of more stringent storage requirements for all generators. Hazardous wastes must be stored on impervious surfaces, secondary containment must be provided if functional floor drains or manholes are present in hazardous waste storage areas, and wastes stored outside must be covered.

Full quantity generators are required to keep the following information near storage area phones: a list of emergency phone numbers; a list of steps to take in the event of an emergency; and a description of emergency equipment. For wastes stored outside, generators are also required to have a barrier around the wastes, a means to control entry, and a warning sign posted.

C. Requirements for Transporters-271.11

Chapters Env-Wm 300 and 600 establish requirements for all persons transporting hazardous wastes in New Hampshire. Many of NH's transporter rules are more stringent than EPA's. NH rules require transporters to secure state permits from DES after meeting requirements regarding insurance, personnel training, and planning for emergencies, as well as providing a performance history. NH issues a hazardous waste transporter permit for a period of three years. Transporters are still required to annually update and confirm their vehicle list and register vehicles for the permit. Additionally, transporters who transfer hazardous waste from vehicle to vehicle or remove the waste from a transport vehicle and temporarily store for less than 10 days must obtain a transfer facility permit. These transporters are exempt from such permit requirements under the federal regulations at 40 CFR 261.12.

Vehicle identification and compliance requirements are consistent with the federal Department of Transportation and the NH Department of Safety regulations as set forth in 49 CFR and Saf-C 600, respectively.

Transporters must comply with record keeping and reporting requirements that include retention of manifest forms for a period of 7 years.

D. Requirements for Facilities-271.12

NH's rules governing hazardous waste facilities are consistent with and equivalent to EPA's base program and non-HSWA Clusters I-V regulations. New Hampshire is more stringent than EPA in that it requires facilities to submit an annual report instead of a biennial report; retain manifest forms for seven years instead of three; send a copy of the manifest to the generator within 15 days instead of 30; send a

copy of the manifest to the generator state and destination state; and report all manifest discrepancies, rather than only significant ones. NH also has specific procedures for facilities and generators to follow when an entire, or partial manifest shipment is rejected.

E. Requirements for Permitting-271.13 and 271.14

Before constructing or operating a hazardous waste treatment, storage or disposal facility, the owner or operator must satisfy applicable permitting or interim status requirements which meet or exceed federal standards. New treatment, storage or disposal facilities that plan to receive hazardous waste from off-site sources must meet comprehensive siting standards. New Hampshire's siting requirements are more stringent than the federal requirements. For instance, NH specifies a minimum distance from residences, which is not included in the federal regulations. These requirements are set forth in Env-Wm 353.09. Siting for treatment, storage or disposal facilities must be approved by a State Siting Board pursuant to RSA 147-A:4-a, and a municipal review committee in the town/city in which the proposed facility will be located.

NH also requires permits for facilities for which EPA does not require permits. These include elementary neutralization units and wastewater treatment units, for which NH requires "limited permits". Transfer facilities must also obtain a NH transfer facility permit.

Pursuant to RSA 147-A:3, 4 and 5, DES has set forth in Part Env-Wm 353 a thorough process for the permitting of hazardous waste facilities. The steps in the permitting process are described in detail in Part IV. of this Program Description.

F. Joint Permitting

DES reviews permit applications and, in accordance with procedures established in Env-Wm 353.18, determines whether the application is complete or incomplete. Copies of applications are submitted to EPA in order for EPA to provide the State with technical assistance. When a permitting activity is required that the State does not have full authorization to regulate, the State relies on EPA to issue that portion of the permit for which State jurisdiction is lacking. The two portions of the permit are combined into one joint permit and then issued to the facility. The State or EPA is responsible for compliance monitoring and enforcement of the portions of the permit that each has issued.

G. Authority to Share Information with EPA-271.132

State statutes and rules provide authority for any information obtained or used in the administration of the state program to be made available to EPA upon request without restriction. RSA 91-A, "the Right to Know Law", provides broad public access to agency records and thus, nearly all information used in the administration of the hazardous waste program is available to the public.

III. The NH Department of Environmental Services' Waste Management Division:
Its Role, Structure, Staff, Estimated Program Costs, and Funding -
40 CFR 271.6(b)

A. Identification of Lead Agency-271.6(b)

The NH Department of Environmental Services, Waste Management Division, has been established under RSA 21-0:8 and RSA 147-A as the state agency with the responsibility for administering the New Hampshire hazardous waste management program.

Though DES works in cooperation with other agencies, notably the NH Department of Justice and NH Department of Safety, DES has the lead and is responsible for enforcement of hazardous waste generator, transporter, and facility standards. DES' role also encompasses hazardous waste facility permitting; no facility may be operated without first receiving a permit from DES.

B. Description of State Agency-271.6(b)

The Waste Management Division is divided into three bureaus: Waste Management Compliance, Waste Management Engineering, and Waste Management Planning.

The Waste Management Compliance Bureau has responsibility for solid and hazardous waste compliance and enforcement activities, rulemaking, and regulatory technical assistance. It is divided into three sections: Hazardous Waste Compliance, Solid Waste Compliance, and Special Investigations.

The Waste Management Engineering Bureau has responsibility for permitting and Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund") remedial activities. It is divided into three sections: Permit and Design Review, Pre-Remedial Engineering, and Remedial Engineering.

The Waste Management Planning Bureau has the responsibility for general administrative activities, including program development. It is subdivided into three sections: Program Implementation, Planning and Community Assistance, and Reporting.

Each section is led by a supervisor that reports to a Bureau Administrator. Each Administrator reports to the Director of the Waste Management Division, who in turn reports to the Commissioner of the Department of Environmental Services (see figure 1).

C. Description and Number of Staff-271.6(b)(1)

There are twenty-six (26) persons in the Waste Management Division who implement the State's hazardous waste/RCRA Subtitle C program. They include the Director of the Division, the Administrator and four (4) staff in the Waste Management Planning Bureau, the Administrator and eighteen (18) staff in the Waste Management Compliance Bureau, and one staff member in the Waste Management Engineering Bureau (see figure 2). The following list represents personnel in the relevant bureaus and designates whether the positions are state or federally funded. All figures are based on the FY 1995 RCRA grant submittal.

Personnel in RCRA Program

1. Director's Office/other Administrative

Director (state funded; RCRA fund, state share)

General duties: directs all aspects of the RCRA Subtitle C program, responsible for RCRA account.

Cost of staff FY 1995: \$3,438 (RCRA fund, state share)

2. Waste Management Planning Bureau

Administrator (state funded)

Environmentalist III (RCRA fund, state share)

Data Control Clerk II (RCRA fund, federal share)

Data Control Clerk III (state funded)

Data Control Clerk II (state funded)

General duties: RCRIS implementation, Biennial Reports, manifest tracking, notifications, processing freedom of information requests, and tracking legislation.

Cost of staff for FY 1995: \$34,437 (RCRA fund, state share)
\$20,085 (RCRA fund, federal share)

3. Waste Management Engineering Bureau

Chemical Engineer II (RCRA fund, federal share)

General duties: handles permitting of hazardous waste facilities and technical assistance for closures and RCRA Corrective Action.

Cost of staff for FY 1995: \$39,546 (RCRA fund, federal share)

4. Waste Management Compliance Bureau

a. Hazardous Waste Compliance Section

Administrator III (state funded; RCRA fund, state share)

Administrator II (state funded; RCRA fund, state share)

Word Processor Operator I (RCRA fund, federal share)

Waste Management Specialist IV (RCRA fund, federal share)

Waste Management Specialist III (state funded-used oil fee)

Waste Management Specialist III (RCRA fund, federal share)

Waste Management Specialist II (RCRA fund, federal share)

Waste Management Specialist II (state funded-used oil fee)

Environmentalist IV (state funded; RCRA fund, state share)

Environmentalist III (RCRA fund, state share)
Environmentalist II (state funded)
Hydrogeologist III (RCRA fund, federal share)
Supervisor VII (proposed-Corrective Action: RCRA fund, federal share)
Civil Engineer IV (state funded)

b. Special Investigations Section

Supervisor VI (state funded)
Waste Management Specialist III (state funded)
Waste Management Specialist III (state funded)
Environmentalist III (state funded)
Word Processor Operator I (state funded)

General duties: Conducts RCRA TSD, generator, transporter and non-notifier inspections, declassifications, conducts hazardous waste complaint investigations, manages transporter permitting program, provides technical assistance to the Department of Justice in hazardous waste case development, provides technical assistance to regulated entities, Bureau lead RCRA Corrective Action, coordinates all aspects of RCRA Subtitle C Authorization of NH's waste management program. Writes hazardous waste rules and coordinates staff's RCRA training.

Cost of staff FY 1995: \$206,547 (RCRA fund, federal share)
\$65,343 (RCRA fund, state share)

5. Total cost of program staff FY '95: \$279,487 (RCRA fund, federal share)*
\$103,218 (RCRA fund, state share)

NOTE: "*" denotes that the figure for "RCRA fund, federal share" includes an additional \$13,309 for direct accounting services.

6. Estimated Program Costs and Funding Sources - 271.6(b)(2) and (3)

Based upon the budgetary figures from the NH's FY 1995 grant application to EPA for RCRA funds, the following is itemized estimate of funding required for the two-year period after program approval:

	<u>Total</u>
Personnel	765,410
Fringe Benefits	260,394
Travel	9,000
Equipment	2,000
(more if carryover allowed)	
Supplies	19,742
Other (training, tuition, audit, lab, rent)	29,428

Total Direct Charges	1,085,974
Indirect Charges	20,692
TOTAL	1,106,666
Federal Funding Required	830,000
State Match	276,666

IV. Applicable State Procedures - 40 CFR 271.6(c)

Part IV. describes, in sections A through H, the regulatory procedures for issuing standard permits for hazardous waste treatment, storage or disposal facilities; for modifying, suspending, terminating and refusing to renew standard permits (and the associated appeal procedures); for appeal of agency enforcement orders and final permit decisions; for conducting standard permit hearings; for issuing limited permits, transfer facility permits, and emergency permits; and for delisting hazardous wastes. In addition, the State has well-defined procedures for amending statutes and rules, as outlined in sections I. and J. Section K. briefly discusses availability of information. Sections L. and M. set out proposed procedures for managing new programs in corrective action and mixed wastes, respectively.

A. Standard Permit Procedures.

DES, under the authority granted by RSA 147-A, has established a procedure for processing applications for Standard Permits for hazardous waste treatment, storage or disposal facilities. Upon receiving an application for a Standard Permit, DES will use a checklist to initially determine whether the application is complete. When applicable, the NH Department of Environmental Services, Air Resources Division and Water Supply and Pollution Control Division shall also contribute to the determination of completeness. If the application is determined to be complete, the applicant will be so notified. If the application is incomplete, the applicant will be informed of its deficiencies and will be requested to formally resubmit the application with a resubmittal fee.

If the permit application is for a new hazardous waste treatment, storage or disposal facility that will receive hazardous waste from off-site sources, the applicant must also meet DES's comprehensive site location standards, and be approved by the State's Hazardous Waste Facility Siting Board pursuant to RSA 147-A:4-a. The public hearing procedures of the Hazardous Waste Facility Siting Board are set forth in RSA 147-A:4-a,II.

Within 15 days after making a determination that a permit application is complete, DES notifies the public and town officials, as required by RSA 541-A for any permit or license issued by the State. For new facilities, DES also requests that the town officials appoint a municipal review committee in accordance with RSA 147-C to review the permit application. DES also assigns an engineer to conduct an extensive technical review of the application as well as a site evaluation.

The completed application is then made available to the public and other agencies, including EPA, for a 30-day comment period. During this time, anyone may review and comment upon the completed application. After the 30-day public comment period, DES will decide whether to write a draft permit or to deny the application. If a draft permit is written, it is subject to public review and comment. First, the applicant is to have 30 days to review the draft permit. The draft permit

is then made available to the public and to other agencies for a 45-day comment period during which time anyone may make written comments. The document shall then be presented in a public hearing which will involve proper notification of the public, and will be conducted according to procedures set forth in part Env-Wm 214.

If a municipal hazardous waste facility review committee is involved in the permit application process, the committee must submit its report to DES within 30 days after the public hearing(s).

Within 90 days from the final date that the public may submit information to DES, a permit is to be either issued or denied. The decision is made after evaluating all duly-submitted information, including the completed application and associated communications and information, the draft permit, all public comments, and the report from the Municipal Review Committee, if any. Pursuant to RSA 147-A:15, any permit decision may be appealed to the Waste Management Council. State statute, RSA 147-A:4-a, requires that the Hazardous Waste Facility Siting Board review all applications for a new hazardous waste treatment, storage, or disposal facility, and shall make the final decision on approval or disapproval of the application. DES will not issue a standard permit unless the application has been approved by the siting board. Permits are granted for a term of 5 years, with conditions, and are subject to renewal or modification.

At key points throughout the Standard Permit process, DES informs EPA of certain actions and occurrences. State/EPA Memorandum of Agreement for Final Authorization stipulates that the State will provide to EPA the following permitting information: copies of permit applications, revisions and additions (within ten working days of receipt), and copies of draft permits, public notices, final permits, proposed permit modifications, and permit modifications (within five working days of completion).

B. Procedures Regarding Hazardous Waste Treatment, Storage or Disposal Permit Modifications, Suspensions, and Revocations.

Under Env-Wm 353.28 and 353.29, DES may, if there is cause, modify, suspend, terminate, or refuse to renew a permit. These sections set forth provisions governing when cause exists for modification, suspension, termination, or nonrenewal.

If DES wishes to modify a permit, it must prepare a draft permit incorporating the proposed changes. The draft permit will be made available for the same public participatory procedures used for an initial draft permit action, the procedures being equivalent to those of RCRA. The permittee has an opportunity to be heard by submitting a written request for a hearing within 30 days of issuance of the draft permit. The adjudicatory hearing is held in accordance with procedures set forth in Env-Wm 215.

In the case where a threat to public safety, health, or welfare requires emergency action, DES would immediately order suspension of the permit. The Order of Suspension serves as a temporary termination or modification of the permit and is effective upon issuance. Per Env-Wm 353.29(h)(2), DES must begin an adjudicatory hearing, in accordance with Env-Wm 215, within 10 business days of issuance of the order.

If DES wishes to terminate or refuse to renew a permit, DES prepares a notice of intent to terminate. The notice is issued to the permittee and is put out for public notice and comment, just as with a draft permit. The permittee has an opportunity to be heard by submitting a request for a hearing within 30 days of issuance of the notice of intent to terminate. The adjudicatory hearing is held in accordance with Env-Wm 215.

C. Appeal of Agency Enforcement Orders and Final Permit Decisions

If a permittee is aggrieved by a final decision of DES, rendered after adjudicatory hearing, regarding issuance, modification, suspension, termination, or refusal to renew a permit, he may appeal the decision to the Waste Management Council by filing a notice of appeal with the Council within 30 days of issuance of the final decision. The hearing procedures are specified in Env-WMC 200. Similarly, any person aggrieved by an agency enforcement order may appeal to the Waste Management Council in like fashion.

D. Hearing Procedures for Hazardous Waste Facility Permits.

Procedures for conducting public hearings for hazardous waste facility permits are set forth in Chapter Env-Wm 200.

E. Limited Permit Procedures.

Under Env-Wm 353.05, persons may receive a special permit, termed a limited permit, for elementary neutralization and wastewater treatment units. The owner or operator must file a notification form with DES so that DES can determine whether the operation meets the conditions necessary for a limited permit. (A Limited Permit application form is included in Part X).

Before issuing a limited permit, a DES inspector may inspect the facility to ensure that the facility qualifies for the limited permit. If not, said facility must cease the regulated activity and apply for a Standard Permit. Limited permits granted by DES are issued for a term of 5 years and are subject to renewal.

F. Procedures for Emergency Permits.

Env-Wm 353.05 establishes provisions for emergency permitting. DES may issue an Emergency Permit to treat, store, or dispose of hazardous waste when it finds that such waste has caused an imminent and substantial danger to human health or the environment. The permit may be either oral or written, but, if oral, must be followed within 5 days by a written permit. Also, public notification of the permit must be published, and pursuant to State/EPA grant agreements, the EPA must be informed of the permit issuance. The term of the permit may not exceed 90 days, and DES may terminate the permit at any time should it be deemed necessary for environmental and health reasons.

G. Transfer Facility Permit Procedures

Env-Wm 353.13 establishes provisions for permitting transfer facilities. Although the procedures are similar to those required for a standard permit, there are some requirements which have been reduced or eliminated. For instance, no siting permit or siting board is required, and a public hearing may be held at the discretion of DES. The siting criteria is significantly reduced from that required for a standard permit. However, as with the standard permit, a transfer facility permit is granted for a term of 5 years, with conditions, and is subject to renewal or modification (A Transfer Facility Application form is included in Part X.)

H. Delisting Procedures.

Pursuant to Part Env-Wm 406, any person may petition DES to request the delisting of a hazardous waste at a particular facility. The delisting petition must meet the criteria and procedural provisions set forth in said part, which contain requirements consistent with and equivalent to EPA's delisting requirements at 40 CFR 260, Subpart C. Should a general

wish to delist a federally listed hazardous waste, the generator must first petition EPA for delisting. Once approved, generator may make a similar request to DES to delist the waste at the state level. Approval of a hazardous waste delisting applies only to those generators who have petitioned DES for the delisting.

I. Procedures for Adopting and/or Amending Rules.

Under NH Statute, RSA 21-0:9, all hazardous waste rules proposed by the Waste Management Division must be presented to the Waste Management Council for consideration prior to filing a proposed rule under New Hampshire Administrative Procedure Act, RSA 541-A. The Administrative Procedure Act dictates the State's procedure for adopting new rules and amendments. The New Hampshire Rulemaking Manual, published by the Division of Administrative Rulemaking, is intended to help agencies comply with RSA 541-A. The rulemaking process begins with drafting the rule or rule amendment followed by writing a fiscal impact statement (FIS). The latter document must be submitted to the State's Legislative Budget Assistant, along with a copy of the proposed rule, at least 3 weeks before publication of notice in the NH Rulemaking Register. The FIS compares the costs and benefits to the state and political subdivisions and notes whether or not there is a federal mandate for the proposed rule. If the proposed rule is changed after the submittal of the FIS, the FIS must be amended to reflect those changes.

An agency must give notice (see the rulemaking notice form in Part X.) in the NH Rulemaking Register of at least 10 days prior to a public hearing on the proposed rule and then extend the public comment period at least 5 days beyond the public hearing. After the public comment period ends, the agency must file the final proposed rule within 150 days. All proposed rules are reviewed by the Joint Legislative Committee on Administrative Rules (JLCAR).

If the JLCAR votes to make a preliminary objection to a proposed rule, the agency must respond to the JLCAR's objections. The JLCAR will make a decision of action on the proposed rule within 45 days of the date of the agency's response. The agency can adopt and file the rule as soon as the JLCAR acts or at the expiration of the 45-day period, whichever comes first, provided the JLCAR does not sponsor a joint resolution to the rule. A rule becomes effective when it is filed in its final form with the NH Division of Legislative Services or, if indicated by the adopting agency, on a specified later date.

Figure 3 outlines the rulemaking process and includes time frames.

J. Procedures for Adopting and/or Amending Statutes.

The state's procedure for passing legislation is outlined in Figure 4. In short, it is a bicameral process that involves review by legislative committees and gubernatorial approval. The New Hampshire legislature holds annual sessions.

K. Availability of Information.

DES makes its information available to the public in a manner and degree consistent with, and equivalent to, EPA. DES also treats confidential information in accordance with applicable state and federal authorities.

L. Procedures for New Hampshire's Corrective Action Program

This section details the State's corrective action program:

1. General

DES intends to implement its corrective action program utilizing Subpart S as its primary guidance tool. Additionally, DES intends to follow other EPA corrective action guidance as it is developed. Section L.11. sets out the "Essential Elements" for State authorization for corrective action required by EPA and describes how the State's program satisfies each of these elements.

2. Identification of Sites

DES uses several sources of information to identify facilities that are potential candidates for corrective action:

- a. Facilities that notified of hazardous waste generation activity in 1980 as "protective filers", that were subsequently released from active consideration for RCRA TSD permits and should not have been released.
- b. Facilities that are brought to DES' attention when RCRA inspections or complaint investigations reveal that hazardous wastes have been disposed.
- c. Facilities where either a responsible party or interested party has submitted an environmental site assessment pursuant to the State's duty to report as per the requirements of RSA 147-A.
- d. Facilities that have active RCRA TSD permits and have been identified as candidates for corrective action.

3. Prioritization for Inspection and Initial Evaluation for Release

Once a facility has been identified, DES will review all available information on the facility in order to determine if an inspection and initial evaluation for release is warranted. DES will prioritize facilities for inspection and initial evaluation for release based upon DES' interpretation of the known and potential environmental and public health threats posed by releases from the facility.

4. Prioritization for Further Action

Once it has been determined that a release has occurred, DES will prioritize a facility for further action under the corrective action program based on the extent to which the known release poses an imminent and substantial threat to human health and the environment. Sites with known threats that pose real risks will receive priority over those sites that pose hypothetical or suspected risks.

5. Sampling and Analysis for Preliminary Release Determinations

If a preliminary release determination has not yet already been performed by the responsible party, then DES will request that the responsible party submit a preliminary release determination work plan to DES for review and approval. DES will review the plan to ensure that it is adequate to determine whether or not there have been releases of hazardous constituents to the environment.

If DES determines that a specific situation warrants an immediate state response, DES may choose to use its own sampling and laboratory resources to perform preliminary release determinations.

6. Corrective Action Oversight

DES will use its available staff on an as needed basis and at its discretion when DES believes that oversight is necessary during RCRA Facility Investigations, Corrective Measures Studies, Corrective Measures Implementation and Stabilization. DES will base its need for corrective action oversight, in part, on its past experiences with the facility's operator and the operator's consultants.

7. Corrective Action Enforcement

DES will broadly classify Corrective Action violations as failures to comply with the terms of the Corrective Action Permit. Violations will be classified and prioritized for enforcement based on DES' determination of the extent to which the violation impedes or retards DES' ultimate goal of remediating the site and/or protecting public health or the environment.

DES depends on the New Hampshire Department of Justice for legal counsel in pursuing responsible parties to perform hazardous waste remediations, for the preparation of various legal documents such as consent agreements relating to corrective action and to represent DES in legal actions against recalcitrant responsible parties.

8. Criteria for Inclusion in Corrective Action

DES will use the following as criteria to determine whether or not a facility will be managed under the RCRA Corrective Action permit process, or under other available enforcement authorities:

- a. whether or not a facility filed a Part A Permit Application and later filed a Part B Permit Application, but then withdrew the Part B Permit Application;
- b. whether or not the facility received protective filer status and should not have been released from active consideration for a RCRA Part B Permit;
- c. whether or not the responsible party for the facility is able and willing to perform the program elements of the RCRA Corrective Action process. If the responsible party is able and willing to remediate the site under the RCRA Corrective Action program, DES may elect to manage the facility under this program;
- d. within the universe of hazardous waste sites in New Hampshire, exclusive of sites listed on the Superfund National Priority List, DES expects to preferentially include those facilities in the RCRA Corrective Action Program that pose or are expected to pose the greatest threats to human health and the environment; and
- e. if the responsible party is not able and willing, DES may instead elect to shift the facility to the CERCLA Pre-Remedial Program.

9. DES' Compliance Strategy

Corrective Action Permits issued by DES will include schedules and deadlines for completion of the various Corrective Action program elements. DES will assign a project manager for each Corrective Action Permit. The project manager will be responsible for overseeing compliance with the permit and acts as a single point-of-contact with the responsible party for all intra-departmental issues relating to the

implementation of corrective action at the facility, except for the Groundwater Management Permit. Groundwater Management Permit responsibilities are retained by DES' Water Supply and Pollution Control Division.

DES will maintain a pro-active position in the management of Corrective Action Permits to ensure that all program elements of the permit are completed in a timely fashion.

10. DES Staffing for Corrective Action

DES currently has one full time employee (Hydrogeologist III) to implement the Corrective Action Program. DES also anticipates the addition of a Supervisor VII position for the program. DES believes that this level of dedicated staffing will be sufficient to implement Corrective Action activities.

DES will utilize other experienced management, technical and support staff on an as needed basis to assist in Corrective Action activities. As-needed staffers will assist in project management responsibilities and provide input based on their various types of professional experience and expertise. Corrective Action work assigned to "as-needed" staffers will not impact on-going RCRA program work because these people do not work as a state match to the RCRA grant. They work in the Department's Groundwater Protection Bureau or in the State Site Management program, which is state funded. These additional personnel are further discussed in section L.11.d.

11. DES' Enforcement Authorities

DES' current authorities to require corrective action at hazardous waste sites are derived from the State's Hazardous Waste Management Statutes and Rules, RSA 147 - A & B and Env-Wm 110, 211-216, 351-353 and 400-1000, respectively, as well as DES statutes and rules for Protection of Groundwater, RSA 485 A & C and Env-Ws 410, respectively. DES has the authority to use these statutes and rules to require investigation and remediation at any RCRA facility or any site where a release has occurred. Once DES receives authority for Corrective Action from EPA, DES expects to initiate rulemaking for Corrective Action that will be incorporated into NH's Hazardous Waste Rules as Env-Wm 1100.

The following addresses the "Essential Elements" required for State Authorization for RCRA Corrective Action, as specified by EPA.

a. Threshold Legal Requirements

i. The State has authority to require cleanup of releases to all environmental media (e.g., groundwater, soils, air, surface water, sediments). RSA 147-A:14 gives the State the authority to require such remedial measures as may be necessary.

ii. The State has authority to require cleanup of all hazardous waste constituents (in Appendix VIII) under the same broad provisions of RSA 147-A:14 as noted in item number 1 above.

iii. The State has authority to require cleanup of releases that extend beyond facility boundaries. The State has adopted rules incorporating by reference the federal requirements of 40 CFR 264, Subpart F, governing releases from solid waste management units. The specific citation in the State's hazardous waste rules is Env-Wm 708.02(j). These

provisions include 40 CFR 264.90(a)(1) and 264.101, which require any facility owner or operator having solid waste management units to comply with permit conditions for Corrective Action beyond the facility boundary where necessary to protect human health and the environment, regardless when the waste was placed in the units, in accordance with the statutory requirements of RCRA Section 3004(v). Corrective Action requirements may also be incorporated as permit conditions pursuant to Env-Wm 353.07(c).

iv. The State has authority to require owner/operators to demonstrate financial assurance for Corrective Action. The State has adopted rules incorporating by reference the federal requirements of 40 CFR 264.101(b). These regulations govern financial assurance requirements. The equivalent State citation is Env-Wm 708.02(j).

v. The State, when issuing RCRA Subtitle C or equivalent permits, specifies schedules of compliance for addressing Corrective Action. The State has adopted rules incorporating by reference the federal requirements of 40 CFR 264.101(b), which includes a requirement for a schedule of compliance for Corrective Action. Also, RSA 147-A:3,XI authorizes the State to impose compliance schedules relative to permits for facility operation, including those facilities where there has been disposal of hazardous waste.

vi. The State, when defining the term facility for the purposes of Corrective Action, uses the definition "all contiguous property under the control of the owner/operator". The scope of the State's authority under RSA 147-A is broad enough to allow this definition of a facility to be adopted.

vii. The State has the authority to compel owners and operators of RCRA facilities to investigate and characterize releases as well as to study potential remedies. This authority comes from the provisions of RSA 147-A:14 which allow the State to "require such remedial measures as may be necessary". These investigations, characterizations and studies are an integral part of most remedial measures.

viii. The State has authority to enforce required Corrective Action. Pursuant to the statutory enforcement provisions of RSA 147-A:14, the State may issue orders or file suit to enforce any permit condition or Corrective Action order, and may "require such remedial measures as may be necessary". In addition, pursuant to RSA 147-A:13, the State may issue orders in situations that pose an imminent and substantial hazard to human health and the environment requiring the facility operator to eliminate the hazard. Such "imminent hazard" orders are not stayed pending an appeal.

b. Important Substantive Corrective Action Requirements

i. Point of compliance for groundwater remediation at the unit boundary. The State has adopted by reference in Env-Wm 708.02(j), the 40 CFR 264.100(a)(3) compliance point requirements.

ii. Cleanup standards to protect for reasonable future uses. The State has adopted by reference in Env-Wm 708.02(j), the 40 C.F.R. 264.100(b) requirements that require the owner/operator to implement a Corrective Action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place.

iii. Authority to require cleanup of non-SWMU related releases at facilities. RSA 147-A:13 authorizes the State to issue orders in situations that pose an imminent and substantial hazard to human health and the environment. This authority is broad enough to allow orders to be issued for non-SWMU related releases. These orders require the facility operator to eliminate the hazard.

iv. Authority to make final remedial decisions as to required corrective actions. Pursuant to RSA 147-A:14, the State may "require such remedial measures as may be necessary". The scope of this statutory authority is broad enough to include the authority to make final remedial decisions as to required corrective actions.

v. Authority to require interim measures prior to full remedy selections. Pursuant to RSA 147-A:13, the State may issue orders in situations that pose an imminent and substantial hazard to human health and the environment, requiring the facility operator to eliminate the hazard.

vi. Authority to require remedy selection standards or criteria that ensure protective, long term reliable remedies. Env-Wm 708.02(j) adopts by reference the 40 CFR 264.100(f) and (h) requirements. These require that the owner or operator continue Corrective Action for as long as is necessary to achieve compliance with the groundwater protection standard. When a chosen remedy is no longer deemed to be effective, appropriate changes must be made to the remedy.

vii. Authority to specify monitoring locations and techniques for detecting releases and monitoring performance. Env-Wm 702.11 gives the State authority to require the installation and operation of groundwater monitoring systems. Env-Wm 702.12, 702.13 and 702.14 also give the State additional authority and set out the requirements for groundwater monitoring. Env-Wm 708.02(j) adopts by reference the 40 CFR Subpart F, 264.100(d) requirements for establishing and implementing groundwater monitoring programs.

viii. Public participation in remedy selection decisions. DES' permitting rules provide for public participation in the permitting process. With regard to remedy selection, DES intends to follow the remedy selection process and public participation requirements outlined in EPA's proposed regulations for Subpart S.

c. Important Program Management Requirement Areas

i. The State, through the State grant process, annually negotiates specific performance commitments based on national operating guidance, such as the RCRA Implementation Plan.

ii. The State uses the National Corrective Action Prioritization System for setting priorities for Corrective Action.

iii. The State utilizes RCRIS to provide an adequate level of Corrective Action data that is accessible for regional and headquarters oversight.

d. Capability of State Personnel

i. Hydrogeology - Current dedicated State staffing in the RCRA Corrective Action program is limited to one full time Hydrogeologist III with eight years of work experience in the Waste Management Division and an additional six years of related professional experience. Additional technical expertise in hydrogeology is available to the Waste Management Division from the Groundwater Remediation Section of the Department's Groundwater Protection Bureau. Four hydrogeologists are available on an as-needed basis to assist in project management activities related to site characterization and groundwater remediation.

ii. Civil or Geotechnical Engineering - The Corrective Action program benefits from the experience of one P.E. Civil Engineer with 3.5 years of experience in the Waste Management Division and an additional eight years of related professional experience. Also, the services of a Civil Engineer with four years of experience in the Waste Management Division and an additional two years of related professional experience are available. These two positions are called upon for assistance on an as-needed basis.

iii. Chemical Engineering - A Chemical Engineer with 13 years of experience in the Waste Management Division and an additional ten (10) years of related professional experience is available to assist in the program on an as-needed basis.

12. Intra-Agency Interaction

DES' Waste Management Division coordinates with DES' three other Divisions, Air Resources, Water Resources, and Water Supply & Pollution Control in its efforts to facilitate corrective action at hazardous waste facilities. This coordination ensures that all concerns dealing with multi-media compliance are effectively addressed and that each division's respective rules are considered when a remedy is developed and implemented.

13. Inter-Agency Interaction

DES coordinates its Corrective Action activities with other state agencies such as the Department of Health and Human Services, Division of Public Health Services, Bureau of Health Risk Assessment (BHRA).

DES forwards environmental health risk assessments prepared in conjunction with remedial investigations to BHRA for review and comment. DES considers BHRA's recommendations when formulating requirements for corrective action at a facility.

For sites being handled under Corrective Action for which radioactive mixed wastes are a concern, DES will coordinate with the Department of Health and Human Services, Division of Public Health Services, Bureau of Radiological Health.

14. Interdisciplinary Approach

DES uses an interdisciplinary approach in administering the State's corrective action program. This approach affords the site project manager the opportunity to draw upon numerous technical disciplines within DES to review remedial action plans prepared by responsible parties. This approach ensures a high standard in the technical review of proposals for corrective action and results in more effective corrective actions once they are implemented.

DES utilizes the talents of many professionals in its interdisciplinary approach including: environmental engineers, RCRA waste management specialists, environmental health risk assessors, toxicologists, hydrogeologists, biologists, chemists and civil engineers.

15. Stringency of State's Requirements

New Hampshire's requirements for corrective action are more stringent than EPA's in that the responsible party for corrective action must determine whether or not all potential aquifers beneath a facility have been contaminated, not just the uppermost aquifer.

DES' requirements for Corrective Action (Env-Wm 708.02(j)) incorporate by reference the Corrective Action program requirements of 40 CFR 264.100 & 101.

16. Format for Site Evaluations and Remedial Action Plans

DES uses a standardized, logical and streamlined approach to evaluating the nature and extent of contamination at known and suspected hazardous waste facilities. DES uses a similar approach at facilities where remedial action is required. DES emphasizes active source control measures over management of migration and passive remedial measures.

Guidance for the structure and requirements of remedial investigations is taken from DES' Groundwater Protection Rules, Env-Ws 410. Guidance for the structure of remedial action plans is also taken from Env-Ws 410 as well as DES' Rules for Reporting and Remediation of Oil Discharges, Env-Ws 412. To further DES' goal of standardizing requirements for facility site assessments where hazardous constituents are known or expected to occur, DES may use, as guidance, all or portions of ASTM Standards E 1527, Phase I Environmental Assessments and E 1528, Transaction Screens.

When directing responsible parties to prepare remedial action plans, DES emphasizes source control measures over management of migration. This is especially true when discrete sources of contamination have been identified and remediation of these sources is determined to be feasible.

17. Current and Anticipated Corrective Action Activities

State lead Corrective Actions that have been performed in the past include the construction and start up of a groundwater and soil vapor treatment plant at the Freudenberg-NOK plant site in Bristol, the implementation of a pilot scale enhanced product recovery system at the Beazer East groundwater treatment site in Nashua (this system was designed to improve operation of the existing groundwater recovery system), and removal of contaminated surface water, contaminated soil and drums of hazardous waste at the Newmarket Landfill in Newmarket.

There is currently one site in New Hampshire that has a formal EPA Corrective Action Permit. This is the Hampshire Chemical site in Nashua. Current site status is that field work for the Phase Two RCRA Facility Investigation is underway. A Voluntary Interim Measure is expected to be performed later this year to remove buried drums of wastes.

Anticipated future Corrective Action work in New Hampshire includes the following sites:

- a. Hampshire Chemical, Nashua;
- b. W.W. Cross Tack Pile in Jaffrey;
- c. Cardinal Landfill in Farmington;

- d. Davidson/Textron Plant Site in Farmington;
- e. Freudenberg-NOK, Bristol;
- f. Town of Lincoln Landfill/Burndy Disposal Area, Lincoln;
- g. Beazer East, Nashua;
- h. Coating Systems, Inc., Nashua;
- i. King Manufacturing, Jaffrey;
- j. Emhart Industries/Black & Decker, Jaffrey.

When the State receives Corrective Action authorization, a thorough review of the State's inventory of hazardous waste sites will be conducted to determine those sites that are potential Corrective Action sites. The ten sites listed above are only a small portion of the total anticipated universe of Corrective Action sites.

M. Procedures for Regulating Mixed Waste

As part of its authorization submittal for corrective action, New Hampshire has requested authority to regulate mixed waste. Mixed wastes are defined as wastes which contain both a hazardous waste component and a radioactive component.

1. Program Scope, Structure and Coverage

DES interprets its rules to provide regulatory authority over the hazardous waste components of mixed wastes, regardless of the classification of the radioactive component as low-level, high level, transuranic, or other. The full texts of NH RSA 147-A and the New Hampshire Hazardous Waste Rules can be applied to the management of mixed wastes. Accordingly, New Hampshire's regulation of mixed wastes will be at least equivalent to the regulation of these wastes under the federal program. As described in this program description, some areas of New Hampshire's rules, particularly regarding generator standards, are more stringent than the federal regulations. A system of joint regulation of mixed wastes by DES and the Department of Health and Human Services, Division of Public Health Services ("DPHS") is described below. DES does not currently anticipate any difficulties in implementing its more stringent rules in conjunction with DPHS' rules.

2. State Agency Responsibilities and Program Resources

DES will jointly regulate mixed wastes with DPHS. DPHS' Radiological Health Bureau is the State agency that regulates radioactive materials and wastes in New Hampshire. The roles and responsibilities of the two agencies in the regulation of mixed wastes are set out in the DES/DPHS Memorandum of Understanding ("MOU") which has been included in the Corrective Action Authorization submittal.

New Hampshire is an NRC Agreement State, which means that it has an agreement with the NRC to regulate radioactive material at the state level. DPHS' authority to regulate radioactive materials stems from its Agreement State status, the Radiological Health Program Act, NH RSA 125-F, and its implementing rules, the New Hampshire Rules for Control of Radiation.

a. Responsibilities of DES

The MOU specifies that DES has responsibility for regulation of the hazardous waste components of mixed wastes. This means that, absent any inconsistencies between DES' and DPHS' rules, DES may conduct compliance monitoring, enforcement, and permitting activities for mixed waste handlers as it would for any other hazardous waste handler. DES remains, in every respect, the sole agency

with authority for administration and enforcement of RSA 147-A, and the New Hampshire Hazardous Waste Rules.

b. Responsibilities of DPHS

The MOU specifies that DPHS has responsibility for regulation of the radioactive components of mixed wastes. This means that, absent any inconsistencies between DES' and DPHS' rules, DPHS may conduct compliance monitoring, enforcement, and permitting activities for mixed waste handlers as it would for any other radioactive material handler. DPHS remains, in every respect, the sole agency with authority for administration and enforcement of RSA 125-F, and the New Hampshire Rules for Control of Radiation.

c. Responsibilities Shared by DES and DPHS

The majority of the text of the MOU describes responsibilities that are shared by both agencies. The following is an itemization of those shared responsibilities.

- i. If an inconsistency between DES' and DPHS' rules is identified, whereby compliance with one set of rules causes a handler to be out compliance with the other set of rules, DES and DPHS will work together to resolve the inconsistency after consultation with the NRC and EPA.
- ii. DES and DPHS will establish joint protocols to resolve apparent regulatory conflicts, including the known conflict associated with storage (greater than 90 days) of mixed wastes containing short half-life radionuclides.
- iii. DES and DPHS will, within their respective jurisdictions, provide the necessary information and assistance to facilitate mixed waste program reviews by EPA.
- iv. DES and DPHS will work together to establish protocols for conducting joint inspections of mixed waste facilities. Further, the agencies will work together on an ongoing basis to conduct joint inspections at some mutually agreed level of frequency.
- v. DES and DPHS will exchange information received from EPA and NRC, respectively, regarding regulatory and policy issues which may have an impact on the joint program of mixed waste regulation. The agencies will also notify each other of pending program changes which might affect the mixed waste program.
- vi. DES and DPHS will exchange information pertaining to the identification of mixed waste handlers, correspondence with mixed waste handlers, correspondence with EPA and NRC, enforcement documents targeting mixed waste handlers, and any other documents or information pertinent to the mixed waste program.
- vii. DES and DPHS will assist one another in developing personal safety and protection training schedules in order to provide adequate cross-training to inspectors of mixed waste facilities.

viii. DES and DPHS will notify each other upon receipt of information that an emergency situation involving mixed waste exists. Each agency will continue to play their established roles in providing technical assistance in emergency situations.

d. Staff Resources

The RCRA inspectors within DES will have responsibility for conducting mixed waste facility inspections. There are currently four RCRA inspector positions within DES. The positions include an Environmentalist II, a Waste Management Specialist II, a Waste Management Specialist III and a Waste Management Specialist IV. Current and future RCRA inspectors will be trained to inspect facilities for mixed wastes and to evaluate potential dangers to health and the environment, pursuant to the cross-training plan described earlier.

The RCRA compliance section, including the RCRA inspectors and additional staff, will be responsible for compliance monitoring and enforcement activities. A Chemical Engineer II in DES' Waste Management Engineering Bureau will be responsible for permit writing for mixed waste facilities. Trained compliance staff will assist that position in addressing special permit provisions for mixed wastes. The Special Investigations Section's Environmental Response Unit will be responsible for emergency response duties. All staff required to perform duties related to the mixed waste program will have access to assistance and advice from health physicists employed by DPHS.

e. Program Resources and Costs

The mixed waste program will be implemented using existing human and financial resources within DES and DPHS. Accordingly, no additional personnel costs are currently anticipated.

Both DES and DPHS already possess equipment for detecting the radioactive component of mixed wastes. DES and DPHS anticipate incurring costs for cross training each agency's inspectors. The following costs are estimated for initial and update training over the next two years:

Three DES RCRA inspectors:	\$4500.00 (\$1500.00 each)
Annual update for DES personnel:	\$1000.00 (\$500.00/year)
Three DPHS inspectors:	\$4500.00 (1500.00 each)
Annual update for DPHS personnel:	<u>\$1000.00 (\$500.00/year)</u>
Total Estimated Cost:	\$11,000.00 (over two yrs)

3. State Procedures

a. Administrative, Permitting and Judicial Review Procedures

The administrative, permitting, and judicial review procedures established for the hazardous waste program and set out in other sections of this program description will also apply to the mixed waste program. DES views the mixed waste program simply as an element of the larger hazardous waste program.

b. Interim Status

With regard to mixed waste facilities qualifying for interim status, DES' rules for determining interim status eligibility are found at Env-Wm 353.02. Once DES receives authorization for the mixed waste program, existing mixed waste treatment, storage, and disposal facilities will have to meet those requirements in order to qualify for interim status.

c. Permitting Procedures

Permitting of mixed waste facilities will be governed under the Hazardous Waste Rules. Permitting such facilities will require extensive coordination with DPHS to ensure that all permit provisions, including those pertaining to waste inspections, cleanup activities, and sampling and analysis, give adequate consideration to the hazards and characteristics of radioactive materials and their unique regulatory status. DES will coordinate as necessary with EPA. DPHS will be responsible for any necessary coordination with NRC.

In the event that an inconsistency in a proposed or final permit provision is alleged under RCRA ' 1006(a), DES and DPHS will confer with NRC.

d. Notification Procedures and Outreach Activities

DES will be notifying mixed waste handlers of regulatory changes through a mailing coordinated with DPHS. Mixed waste regulatory issues will be discussed at the hazardous waste seminar series to be conducted in the Spring of 1995.

4. State Forms

The notification form included in Part X. will be modified to include a section for identifying those handlers that generate or otherwise handle mixed wastes. The generator inspection checklist, which is also included in Part X., will be modified to include mixed waste compliance issues as part of the inspection. No other changes to existing forms are currently anticipated.

5. Compliance Monitoring and Enforcement

The compliance monitoring and enforcement program will be conducted according to the procedures outlined in Part V. The criteria used to prioritize facilities for inspection will be as outlined in Part V., but DES will also consider the inspection priorities of DPHS.

Inspection procedures for mixed waste facilities will differ from standard hazardous waste inspections, in that DES and DPHS have agreed to establish joint inspection protocols. Health and safety considerations unique to mixed wastes may affect decisions to sample wastes and the methods of sampling.

The inspection workload is not expected to change in quantity, since no new personnel or financial resources are anticipated. The additional burden of performing mixed waste compliance and enforcement activities will be absorbed through corresponding reductions in hazardous waste compliance and enforcement activities.

6. Universe and Quantity of Mixed Waste

There are approximately 100 radioactive materials licensees in the state of New Hampshire. The universe of mixed waste handlers comprises some subset of those licensees. DPHS believes less than 20% of the licensees may be mixed waste handlers, though the number is uncertain. The majority of the handlers are believed to be universities and hospitals. New Hampshire also has a nuclear power plant in Seabrook, NH which stores mixed wastes on-site. The notification mailing discussed in paragraph 3.d. of this section will require that mixed waste handlers notify DES of their activities.

V. Compliance and Enforcement Program - 40 CFR 271.6(e)

The State's compliance and enforcement program is consistent with and equivalent to EPA's program.

A. Compliance Program.

1. General

The State's compliance program is designed to ensure that all operations of hazardous waste generators, transporters, and facilities are conducted in accordance with state standards set forth in Env-Wm 100 through 1000, and, in the case of facilities and transporters, with the conditions the state specifies in permits. The Hazardous Waste Compliance Section is primarily responsible for conducting RCRA compliance evaluation inspections (CEIs) as mandated in EPA's annual RCRA grant commitments, but also conducts non-notifier inspections, declassifications, and provides technical assistance to regulated entities. The Special Investigations Section (SIS) conducts waste complaint investigations which may lead directly to a civil or criminal action against a violator. The Special Investigations Section also conducts non-notifier inspections, transporter inspections, declassifications, and provides technical assistance to the NH Department of Justice in case development resulting from hazardous waste investigations.

There are a number of means by which the State implements its compliance program. DES conducts RCRA CEIs using the RCRA inspection checklist, a copy of which is included in Part X. Such inspections follow the format described in section V.A.2. and are conducted according to negotiated grant commitments with EPA each year.

DES also utilizes the newly developed "partial" inspection which is a streamlined approach to investigating a generator's compliance with physical waste handling requirements. Facilities in the most environmentally sensitive areas of the state are given first priority as candidates for partial inspections. A full RCRA CEI can be conducted, but the compliance status at each facility determines the depth to which the inspector reviews the administrative plans and procedures. It is the goal of DES to provide education on the administrative management procedures and to inspect the physical waste handling procedures that would pose a direct threat to the environment when carried out improperly. DES believes that this initiative will maximize the State's inspection resources and result in greater compliance in environmentally sensitive areas.

The Special Investigations Section utilizes set procedures in conducting its complaint investigations and non-notifier inspections. These activities may lead to a full RCRA CEI and the associated administrative enforcement procedures, or in the case of more serious violations, to civil/criminal enforcement actions. Additionally, the NH Dept. of Safety's Hazardous Materials Unit (Hazmat Unit) assists DES with traffic stops to ensure transporter compliance with the hazardous waste transportation rules of Env-Wm 100 through 1000. The Hazmat Unit has been called upon on occasion to assist SIS in investigating hazardous waste related complaints.

DES' compliance program is implemented through the use of Letters of Inquiry, Letters of Deficiency, and Administrative Orders. (See Part X.). The Department of Justice plays an active role in the enforcement of such documents (See section V.B.).

Compliance required of permitted hazardous waste facilities is described in Env-Wm 300. Permit conditions are described in Env-Wm 300.

Similarly, the requirements for permitted transporters are set out in Env-Wm 300 and Env-Wm 600. As stated above, the Dept. of Safety assists DES and the Department of Justice in ensuring compliance with these rules.

Finally, the State's compliance program is reinforced through DES' educational and informational endeavors. Described in Part VII., these endeavors strive to make the regulated community more aware of the State's rules and play a key role in ensuring compliance.

2. Inspection Format for Generators and Facilities.

The DES inspection format is similar to EPA's inspection protocol. A pre-inspection meeting is held with company officials to discuss the purpose of the inspection and procedures to be followed during the inspection. Inspectors utilize various checklists to ensure that all inspection elements are completely reviewed and evaluated. The checklists assist in evaluating all pertinent administrative documents, plans, and manifests required under the NH Hazardous Waste Rules. The actual inspection tour focuses on hazardous waste management practices and validates the statements previously reviewed in the pre-inspection meeting. A post-inspection discussion is held with company officials to summarize the findings of the inspection. If recommended by the inspector in the trip summary report, a follow-up inspection is conducted within an appropriate time to ensure correction of deficiencies or violations (See Part X. for inspection-related forms used by the State).

Should DES inspectors target the facility for a partial inspection, the procedures are identical to those followed with the RCRA full inspection, with the exception that the administrative plans of the generator are not reviewed. More attention is given to the physical waste handling and storage elements of the program, unless it becomes apparent to the inspector that a full RCRA CEI is warranted (See Part X. for a copy of the partial inspection checklist.)

3. Inspection Priorities.

DES gives first priority for inspection to those facilities which may create the greatest harm to human health or the environment if their waste streams are mismanaged. Inspectors are assigned inspections accordingly. The Waste Management Compliance Bureau, with its Hazardous Waste Compliance Section and Special Investigations Section, consider the following priorities to be appropriate in implementing a quality inspection program:

- a. TSD facilities operating as commercial hazardous waste facilities;
- b. TSD facilities operating with hazardous waste storage permits, or fulfilling closure and post-closure requirements;
- c. Hazardous waste facilities located in wellhead protection areas.
- d. Generators producing hazardous waste in excess of 1000 kgs/month;
- e. Citizen complaints registered against bonafide generators, transporters, TSD facilities;
- f. Investigation of complaints against companies who have not notified DES of hazardous waste generation;

- g. Generators producing hazardous waste less than 1000 kgs/month;
- h. Transporter inspections with Hazmat Unit officials;
- i. Declassifications.

Should special enforcement circumstances arise which require immediate Waste Management Compliance Bureau attention, priorities may be rearranged on a temporary basis at the discretion of section supervisors.

4. Transporter Compliance.

The State of New Hampshire requires transporters of hazardous waste to possess a valid transporter's permit prior to accepting any hazardous waste from a generator. To be issued such a permit, the transporter must comply with requirements of Env-Wm 300 and Env-Wm 600, including personnel training, insurance, manifesting, placarding, and emergency contingency plans.

In addition to the DES Waste Management Compliance Bureau, the New Hampshire Dept. of Safety's Highway Enforcement Officers have conducted investigations of illegal transportation of hazardous waste. Having undergone intensive instruction in the hazardous materials field, the Highway Enforcement Officers have diligently served the public through citations of various offenders. Operating under the Hazardous Material Unit, the Highway Enforcement Officers conduct regular impromptu inspections on the State's highways to ensure compliance with DES' transporter rules. The unit is augmented with both regular State Police units and local police surveying the roadways for possible transportation violations.

B. Enforcement Program - Summary of the DES Enforcement Process.

Upon completion of an inspection, a tiered structure of enforcement documents may be initiated if a facility is determined to be out of compliance.

Situations involving clarification of procedures or policies trigger a Letter of Inquiry (LOI), which is a request for information regarding possible inconsistencies with rule interpretations. The handler's response to the LOI would be used to determine if violations existed. If violations are identified, a higher level of enforcement would be subsequently initiated.

The Letter of Deficiency (LOD) is utilized by DES when a company is found to have primarily minor violations (generally class II violations under EPA's 1987 RCRA Enforcement Response Policy) and has no entire element (such as the contingency plan, personnel training program, or waste storage area inspection program) omitted from its hazardous waste management program. An LOD will provide the company with a notice of the problem and establish a compliance schedule for correcting the deficiencies. Should DES decide to send an LOD in lieu of an Administrative Order (AO), DES will have sixty days from the original inspection date to send the letter to the generator as per the NH Hazardous Waste Compliance and Enforcement Strategy, January, 1989 (HWCES). A generator who receives an LOD will have thirty days from receipt of the letter to correct the deficiencies and submit written proof of compliance to DES. Failure to correct the deficiencies in the appropriate time frame could precipitate the issuance of an AO. (See below).

While a partial inspection may result in an LOD or AO, typically the action will result in a Report of Partial Inspection letter from DES to the generator explaining any concerns that DES might have. While the letter may read similarly to an LOD, it is different than an LOD in that it does not specify a compliance

schedule and does not require DES follow-up. If DES believes that follow up is required, it will issue an LOD or AO.

Inspected facilities that have major omissions or violations of the Hazardous Waste Rules in their hazardous waste management program would receive an AO. The classification system for violations cited in an AO parallels the classification system utilized by EPA. The State uses EPA's October 26, 1990 RCRA Civil Penalty Policy, EPA Region I's September 16, 1987 RCRA Penalty Assessment Guidance, 40 CFR 271.16(c), and the HWCES to classify violations according to their severity. This classification system assists DES and the New Hampshire Department of Justice when determining possible civil penalties in an enforcement action.

Although an AO becomes effective upon receipt, it does provide for an appeal mechanism. If the party in receipt of an AO is aggrieved by the AO, the party has thirty days after receipt to request a hearing before the Waste Management Council. If the party fails to abide by the provisions of the AO within the prescribed compliance period, or is deemed to be a high priority violator (See Section V.C.), a Request for Enforcement (RFE) will be submitted to the Department of Justice. The Department of Justice would achieve compliance through injunctive relief and/or through civil or criminal penalties of up to \$50,000 per violation for each day of occurrence. The Department of Justice has the authority to sue, in court, without the necessity of a prior revocation of a facility's permit. A follow-up inspection would be warranted if the violations pertain to unsafe conditions existing at the facility.

Final compliance with an LOD is acknowledged through the issuance of a Letter of Compliance. Final compliance with an AO is acknowledged through the issuance of a Notice of Compliance.

If conditions at a facility constitute an "imminent health hazard", an Administrative Order is drafted immediately. Examples of conditions requiring the use of the "imminent health hazard" provision would be those associated with leaking or bulging drums, surface impoundment diking about to be breached, storage of incompatible wastes that threaten fire or explosion, and the locating of wastes such that large segments of the population might be adversely impacted. Orders under the imminent hazard provision of RSA 147-A:13 become effective immediately. Actions required under the imminent health hazard provision are closely monitored by DES personnel.

Those facilities or persons involved in criminal activities associated with hazardous wastes are referred to the Department of Justice directly for enforcement action. The responsibility for conducting the criminal investigation is shared by the Department of Justice and the Hazardous Material Unit of the New Hampshire Department of Safety, with technical assistance from DES.

Note: To assist the reader in understanding the various courses of action possible for complaint investigations and for Gen/TSD/Transporter inspections, two enforcement tracking charts (Figures 5 and 6) are attached.

C. DES' Policy on Enforcement Response.

The HWCES directs enforcement efforts by requiring timely, visible and effective actions against serious violators. As outlined below, the HWCES establishes a system for classifying violations and violators, and describes what is considered to be timely and appropriate for enforcement responses.

1. Classification of Violations and Violators

a. Violations

i. Class I Violation:

Deviations from rules, or provisions of compliance orders, consent agreements, consent decrees, or permit conditions which could result in a failure to:

- (A) Assure that hazardous waste is destined for and delivered to an authorized treatment, storage, or disposal facility (TSDF); or
- (B) Prevent releases of hazardous waste or constituents, both during the active and any applicable post-closure periods of the facility operation where appropriate; or
- (C) Assure early detection of such releases; or
- (D) Perform emergency clean-up operation or other corrective action or releases.

ii. Class II Violation:

Any violation not identified as a Class I violation.

b. Violators

i. High Priority Violator (HPV)

A High Priority Violator is a handler who:

- (A) Has caused actual exposure or a substantial likelihood of exposure to a hazardous waste or hazardous waste constituents; or
- (B) Is a chronic or recalcitrant violator (this may include some handlers who are regularly found to have many Class I or Class II violations); or
- (C) Deviates from the terms of a permit, order or decree by not meeting the requirements in a timely manner and/or by failing to perform work as required by terms of permits, orders, or decrees; or
- (D) Substantially deviates from statutory or regulatory requirements.

ii. Medium Priority Violator:

A Medium Priority violator is:

- (A) A handler with one or more Class I violations who does not meet the HPV criteria; or
- (B) A handler with Class II violations who is not a low Priority Violator.

iii. Low Priority Violator:

A Low Priority Violator is a handler with only Class II violations who is not a Medium or High Priority Violator.

2. Timely and Appropriate Enforcement Responses

The HWCES allows 45 days from the time the inspection is completed to identify or "discover" violations. The enforcement time frames outlined below begin at that point.

a. High Priority Violators

The appropriate enforcement response against a high priority violator is a formal enforcement action (i.e. AO) and the imposition of economic sanctions or penalties. DES will take an administrative action or refer the case to the Department of Justice within 90 days of violation discovery. The case is to be filed within 60 days of referral to the Department of Justice.

b. Medium Priority Violators

The enforcement response to a Medium Priority Violator is the issuance of an AO. DES will issue this order within 120 days of violation discovery.

When there is reason to believe that an LOD will result in an expeditious return to compliance, DES may use this action in lieu of an AO. If this LOD does not result in final compliance, DES will escalate the enforcement response by issuing an AO within 60 days, or by making a referral to the Department of Justice within 90 days. The case will then be filed within 60 days after referral to the Department of Justice.

c. Low Priority Violator

A low Priority Violator should normally receive an LOD or LOI within 60 days of violation discovery as an initial response. If this response does not result in compliance within 30 to 60 days of issuance, DES will issue an AO.

Three figures excerpted from the HWCES are included to illustrate DES' enforcement policy. In order to visualize the ERP being implemented by DES, three figures have been drawn. Figure 7 illustrates violator category dependent upon the type of Class I violation incurred. Figures 8 and 9 are flow charts explaining enforcement response timelines for high and medium priority violators.

D. Public Participation in the State Enforcement Process

State laws and rules provide for public participation in the enforcement process by providing assurances that the state agency or enforcement authority will:

1. Investigate and provide written response to all citizen complaints duly submitted;
2. Not oppose intervention by any party in an action where the party seeking to intervene meets the standards for intervention under state law; and
3. Publish notice of and provide at least 30 days for public comment on any proposed settlements of state civil enforcement actions, except cases requiring immediate action.

VI. Manifest Tracking System - 40 CFR 271.6(f)

A. Overview.

DES maintains a hazardous waste tracking system capable of accounting for all hazardous waste generated within the State and received by NH facilities. Through the manifest system, DES complies with all international shipment requirements as provided by 40 CFR 262 subparts E and F. In NH FY 1994, DES tracked 42,640 manifest shipments. Emphasis is placed on obtaining accurate and complete information. Current and previous year manifests received by DES are readily accessible for up to seven years. Manifests prior to that may be archived in the state archive system for an indefinite period of time. Since July, 1987, DES has entered all manifests into a computerized tracking system. This system has improved the accuracy of hazardous waste generator and facility reports and enhances compliance monitoring and enforcement activities.

B. Implementation.

1. All incoming #2 and #7 (generator state) and #1 and #6 (destination state) copies of the Uniform Hazardous Waste Manifests are filed in a temporary file until both copies have been received. This file is checked for manifests which are still unmatched after 30 days from the shipping date. Letters are regularly sent requesting the generator to either submit the missing manifest copy or an exception report.
2. Hazardous waste manifests are reviewed for accuracy prior to data entry. Letters are sent to generators whose manifest entries are incomplete or appear to be incorrect. After manifests are keyed into the computer, they are filed by generator name. Copies 1 & 6 are further separated by the receiving facility.
3. All generators and facilities are sent quarterly and annual reports which summarize their manifest shipments. Quarterly reports require that a fee be paid into the State's Hazardous Waste Cleanup Fund. These reports are to be reviewed for accuracy and returned to DES with any necessary changes. DES staff then reconcile any manifest discrepancies.

VII. Planning Bureau Activities

DES' Planning Bureau activities encompass a variety of areas such as program management, legislative tracking, capacity assurance, pollution prevention, public education, and information management, including manifest tracking.

A. Program Management.

Personnel from the Planning Bureau work with the Compliance Bureau in managing the RCRA program. This management might relate directly to reporting or information management issues, or to broader issues, such as program direction.

B. Rulemaking and Statutory Amendment.

It is the responsibility of the Planning Bureau to track and oversee legislative developments, whether requested by DES or introduced by a member of the Legislature. Staff from other bureaus may be assigned primary responsibility for legislation that relates to their specific program, but the activities are still coordinated through the Planning Bureau.

C. Hazardous Waste Capacity Assurance.

States are required to prepare Hazardous Waste Capacity Assurance Plans (CAPs) pursuant to Section 104(c)(9) of CERCLA, 42 U.S.C. 9604(c)(9)) as amended. This statute requires that, prior to the President providing funding for remedial actions, a state must assure the availability of hazardous waste treatment or disposal facilities that have adequate capacity to manage the hazardous waste reasonably expected to be generated within the state over 20 years. After October 17, 1989, no new Superfund remedial actions may be funded using federal remedial action resources unless a state first enters into such an agreement providing assurance that the President deems adequate.

NH CAP requirements are coordinated through the Waste Management Planning Bureau's Program Implementation Section. Despite being a CERCLA issue under the law (i.e., if an adequate CAP is not submitted, new remedial action funding is withheld), capacity assurance planning is closely tied to the RCRA program. In order to complete NH's first CAP, which was submitted in October of 1989, the data was collected using hazardous waste manifests. In this CAP cycle, NH assured capacity by entering into a regional interstate agreement and committing to the development of a comprehensive hazardous waste reduction program. For the second full NH CAP submittal, which was submitted in April of 1994, the primary data source was the 1991 Hazardous Waste Biennial Report. Individual demand and capacity data for each of the states is currently being analyzed to ascertain if national hazardous waste capacity exists in each of the CAP management categories. The nature of the CAP process is such that close coordination is required with NH RCRA staff (compliance and reporting), as well as similar staff in other states and EPA.

D. Program Reporting and Information Management.

All RCRA information management activities are coordinated through the Reporting Section of the Planning bureau. With New Hampshire being a full RCRIS implementor, the Reporting Section is responsible

for processing Notification and Part A data and tracking all compliance and enforcement activities. When appropriate, permitting and corrective action events are tracked.

The supervisor of the Reporting Section is the lead on all aspects of RCRA information management, which includes duties as the State's RCRIS Database Administrator (DBA). Program staff are trained on proper completion of data entry forms, utilization of RCRIS reports and the regional RCRIS INFO PC software. DES staff enter manifest information, coordinate notification activities, assign EPA and State identification numbers and process quarterly and annual activity reports. The Reporting Section is also responsible for the mailing, receipt, QA/QC, data entry, and final submission of the Biennial Report. New Hampshire utilizes the BRS software on a PC.

DES has an automated manifest tracking program which is used to generate quarterly and annual reports for the State cleanup fund and for data management purposes. The manifest data is further referenced by inspectors for compliance and enforcement activities. Because of their historical significance, DES has retained manifest records since 1980. The Reporting Section has successfully recorded 1980-1987 manifest documents onto microfilm; a process which is ongoing.

E. Pollution Prevention Program

The Planning Bureau implements a pollution prevention program through education, community outreach, and technical assistance to the regulated community. Education and technical assistance represent a proactive response to pollution rather than solely enforcement, which is generally reactive. The Bureau maintains a toll free number for members of the regulated community that have questions about waste minimization, recycling technologies, or wish to request Bureau personnel to visit their plant sites. DES has appointed a Pollution Prevention Task Force which directs a multimedia effort to promote the pollution prevention concept across environmental programs.

Additionally, DES' Waste Management Compliance Bureau maintains a RCRA hotline, which is available for individuals and hazardous waste generators, whereby technically knowledgeable personnel are available to answer specific questions concerning NH's rules and the proper management of hazardous waste. On a daily basis, one inspector is assigned "phone duty" to respond to such inquiries and provide written correspondence regarding regulatory issues in support of the New Hampshire Pollution Prevention Program. The hotline recorded 1448 calls in the 1993 calendar year.

F. Public Education

Public education activities consist of presentations before school, business, and community groups; the preparation and dissemination of informational fliers, brochures, and fact sheets; and written letters responding to requests for technical assistance by the general public and interest groups. DES recognizes the value of education in achieving program goals.

DES has a quarterly public newsletter. It serves to inform and educate both the business community and the general public about the many facets of the State's environmental programs, including DES' hazardous waste management program. DES also issues press releases upon settlement of major enforcement cases.

VIII. Number of Generators, Transporters, and On- and Off-Site Treatment, Storage, and Disposal Facilities and their Permit Status - 40 CFR 271.6(g)

The following table represents the number of regulated handlers in New Hampshire. All generators have requested and have been given EPA identification numbers. The transporters listed on the table represent all those that have received State transporter permits and are currently active. The majority of such permitted transporters are not based in New Hampshire.

PERMIT STATUS

ACTIVITY TYPE	STATE INTERIM STATUS	STATE RCRA PERMIT	TOTAL
Generators	-	-	3400 of any amount
Transporters	-	-	105 Permits as of 7/1/94)
Storage Facilities Onsite	1	1	2
Offsite	0	0	0
Treatment Facilities	0	0	0
Disposal Facilities	2	0	2

IX. Quantities of Hazardous Waste Generated In-State, Transported into and out of the State, and Treated, Stored, or Disposed of within the State -40 CFR 271.6(h)

The following data were derived from NH's FY 1994 biennial report and hazardous waste manifests processed by DES.

Annual Quantities of Hazardous Waste

ACTIVITY	ANNUAL QUANTITIES
* Total Manifested off-site by NH Generators	14,025 tons
Total Transported into the State	0
Total Transported out of the State	14,025 tons
**Total Treated, Stored, Disposed in the State	547,578 tons
*** On-site (storage only)	0
Off-site (storage only)	0

* Total manifested in 1993 (includes NH regulated generators, with the exception of used oil).

** Waste treated in exempt units as stated in the 1991 biennial report.

*** Not reported

X. Forms Used in the Implementation of NH's Hazardous Waste Management Program

- A. Hazardous Waste Facility Standard Permit Application Form
- B. Hazardous Waste Transfer Facility Permit Application Form
- C. Permit-by-Rule Application Form (Limited Permit)
- D. Hazardous Waste Generator Annual Report
- E. RCRA Inspection Checklist for TSD Facilities
- F. RCRA Inspection Checklist for Generator Inspections
- G. RCRA Partial Inspection Checklist for Generator Inspections
- H. Trip Summary Report for RCRA Inspections
- I. Generator's Document Review Sheet
- J. Notification Form
- K. Manifest Form
- L. NH Rule Making Register Form
- M. Hazardous Waste Transporter Permit Application
- N. Report of Partial Inspection
- O. Letter of Deficiency
- P. Administrative Order

A. Hazardous Waste Facility Standard Permit Application Form

B. Hazardous Waste Transfer Facility Permit Application Form

C. Permit-by-Rule Application Form (Limited Permit)

D. Hazardous Waste Generator Annual Report

E. RCRA Inspection Checklist for TSD Facilities

F. RCRA Inspection Checklist for Generator Inspections

G. RCRA Partial Inspection Checklist for Generator Inspections

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H. Trip Summary Report for RCRA Inspections

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I. Generator's Document Review Sheet

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J. Notification Form

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K. Manifest Form

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L. NH Rulemaking Register Form

M. Hazardous Waste Transporter Permit Application

N. Report of Partial Inspection

O. Letter of Deficiency

P. Administrative Order